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ABSTRACT

This paper discusses the Equal Pay Act, Title VII of the Civil Rights Act of 1964, as it applies to women athletic coaches and physical education teachers. The following points are considered: (1) application of the Equal Pay Act; (2) advantage of voluntary compliance with the Equal Pay Act; (3) factors used to measure "equal work"; (4) problems facing the school board in justifying unequal pay; (5) problems created by "point systems"; (6) practices that are still violations of the Equal Pay Act; (7) some negative effects of equalizing salaries; (8) thoughts on the pressure and number of spectators argument; (9) an ideal for the future; and (10) guidelines for the present. (JD)

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SOME THOUGHTS ON THE EQUAL PAY ACT AND COACHING SALARIES

On May 27, 1977, 30 people interested in the application of the Equal Pay Act to coaching salaries participated in a workshop co-sponsored by the Women's Equity Action League; the Rutgers College Division of Recreational Sports; the New Jersey Association of Health, Physical Education and Recreation; and the New Jersey Association of Directors of Health, Physical Education and Recreation.* Included among the workshop participants were representatives from the Wage and Hours Division of the U.S. Department of Labor, men and women coaches and athletic directors from various high schools and colleges in New Jersey, and representatives from the State Department of Education, the Rutgers University Training Institute for Sex Desegregation, and the WEAL Educational and Legal Defense Fund. Although the group obviously did not have the authority to develop a definitive set of guidelines on this complex issue, the following thoughts and ideas presented during the day-long discussion will undoubtedly prove helpful to school districts and women's rights advocates tackling the same question.

Other Laws Affecting Girls' Sports

The Equal Pay Act speaks only to the issue of pay differentials based on sex, but a school district that can justify its pay scales for coaches may not necessarily be in compliance with other federal laws requiring equal employment opportunity. For example, even if all coaches are male, the district might be paying the coaches of the girls' teams less than the coaches of the boys' teams without violating the Equal Pay Act, but if it has refused to hire women coaches, it is in violation of Title VII of the Civil Rights Act of 1964, as amended. Moreover, if the difference in pay can be attributed to discrimination against the girl participants (e.g. fewer games, less practice time, lack of publicity for games, etc.), the district is in violation of Title IX of the Education Amendments of 1972. (Under New Jersey's Title VI, the school would also be in violation of the state law for paying differing salaries to coaches for boys' and girls' teams regardless of the sex of the coach.)

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Application of the Equal Pay Act

The Wage and Hour Division of the U.S. Department of Labor, in reviewing the pay scales of an employer, will take the following factors into account:

- Both public and private schools are covered by the Equal Pay Act;
- The Equal Pay Act has jurisdiction only where a comparison in compensation--pay and fringe benefits--may be made between a man and a woman;
- Work is equal ("equal" means substantially similar in skill, effort and responsibility, under similar working conditions);
- Pay is unequal (determined by the salary and fringe benefits actually being earned, not by a theoretical pay scale that may or may not be applied);
- Employees are within the same establishment (in the case of schools, this means the same school district, not just the same school building).

It is legal, however, for an employer to justify differences in pay on the basis of:

- A system of merit;
- A system of seniority;
- The quality or quantity of production (usually applied to pieceworkers);
- Factors other than sex.

Advantages of Voluntary Compliance with the Equal Pay Act

Employers may be liable for two years of back pay if they are investigated and found to be in violation of the law. If the violation is willful on the employer's part, back pay may be ordered for three years. Should the employer wish to take the case to court and lose, he/she will owe back pay starting from the two-year period before the date of filing and continuing through the time of the court test. Either the individual bringing the complaint or the Department of Labor has the right to sue for the back pay and an additional sum up to the amount of back pay (liquidated damages) plus legal costs. (Under Title IX, HEW has the right to request back pay from 1972 on.) The sooner a school district brings pay scales into conformity with the law, the less chance there is it will later be forced to pay large settlements.

A voluntary change is not treated as an admission of guilt. If the Department of Labor and the employer reach an agreement without going to court, the agreement will be without prejudice, meaning that the employer does not necessarily admit to any illegal actions. A school board making a total revision of coaching salaries might explain that they have been unable to determine which positions, if any, involved greater skill, effort and responsibility, and hence are equalizing pay; such a statement would not be interpreted as an admission of guilt.

A district that has unequal pay for males and females in coaching positions must be able to justify the pay differentials.

Factors Used to Measure "Equal Work"

The Department of Labor does not tell a school district what factors should be used in determining coaching salaries but rather will ask what factors are being used. Such factors should be objective (quantifiable) and should be applied equally to both sexes. Objective factors might include number of games, number of hours of practice, number of students trying out, number of students on squad, length of season. The Department of Labor will tend to disallow subjective factors such as pressure to win, notions that boys' sports are more important, and irrelevant issues like whether there are admission charges for games. However, the Department of Labor will not rely solely on the list of objective factors. They will look at the factual situation, not the theoretical one; the district probably does not supervise coaches carefully and the description of their duties may vary considerably from what they are actually doing. Moreover, the Department of Labor will weigh the total skill, effort and responsibility required in each position; a higher degree of required skill may, for example, offset in one position the greater responsibility required in another. In that the law requires equal pay for "substantially similar" work, a minor variation in skill, effort or responsibility will not justify unequal pay.

Problems Facing the School Board in Justifying Unequal Pay

School boards frequently have difficulty defending their coaching salaries when any of the following situations occur:

- There is no rationale for the differing pay scales; it is merely tradition to pay the coaches of boys' sports more than the coaches for girls' sports;
- The district has adopted the rationale of a neighboring district for their pay scales when the same factors do not apply;
- The school board has relegated the responsibility for setting coaching salaries to the teachers' union, not realizing that the employer has the legal responsibility for seeing that pay scales are in compliance with the law;
- Negotiations for the coaching salaries are quickly handled in 20 or 30 minutes without proper consideration of the factors involved.
- Not having arrived at the pay scales through an objective evaluation of the positions, the district attempts to justify the pay differentials retroactively when they come under review.

Problems Created by "Point Systems"

Recently, in an effort to develop a rationale for differential coaching salaries, districts have begun to develop point systems to determine pay levels. These point systems are frequently not valid because of one or more of the following factors:

- They may be designed to justify an illegal status quo;

- They may be more theoretical than factual. A compliance officer will look beyond the point system to see what is actually being done in any given coaching position.

- They give equal pay to identical positions only when the law requires equal pay for "substantially similar" work. In this regard a point system with a few broad categories is more likely to be in compliance with the law than one that results in very fine distinctions between jobs and many different pay levels.

- They were developed by a committee that did not include representatives of the girls' sports and hence were biased in their formulation.

- Although the factors taken into consideration are objective--quantifiable--the number of points given to each factor is subjective and the dollar value given to the points themselves is likewise subjective. The result is, therefore, a subjective system that may not stand up to scrutiny under the Equal Pay Act.

Practices That Are Still Violations of the Equal Pay Act

If a district has traditionally paid the coaches of girls' teams less than the coaches of boys' teams, they cannot evade the Equal Pay Act by replacing women coaches for the girls' teams with men coaches. The compliance officer will look not only at the salaries and duties of the coaches currently employed but also at those previously employed, going back as far as five years to determine the patterns of employment. Thus if a man is hired in place of a woman solely to avoid equalizing salaries, the district is still in violation of the law. Nor can an employer hire a woman to replace a man and then lower the salary.

A district cannot equalize the salaries but place all of the women coaches at step one of the new scale while keeping the men coaches at higher steps on the same scale. Seniority systems must always be justified with a particular value placed on each year or period of experience.

A district cannot equalize the salaries and then fire the women who cooperated with the Department of Labor in its investigation. In fact, the identity of the person who files a complaint cannot be revealed to an employer unless the complainant agrees to that disclosure. Anonymous complaints have resulted in successful investigations; complaints filed by local chapters of women's organizations have also served to protect the identity of complainants. The employee who lodges a complaint or is interviewed by the compliance agency is protected by law from harassment and retaliation.

The district cannot equalize salaries for head coaches and make the coaches of the girls' teams assistants to the head coaches. Such a practice would probably be a violation of the Equal Pay Act, Title VII, and Title IX simultaneously in that it would discriminate against women coaches in pay, discriminate against women coaches in employment opportunity, and discriminate against girls in the treatment of their athletic programs.

If districts are to be in compliance with equal opportunity laws and Title IX, they must take affirmative steps to advertise coaching positions in such a way that women will be encouraged to apply. They may not, moreover, set qualifications for coaches that tend to disqualify women unless they can establish that such standards are directly related to the satisfactory performance of the job.

Some Negative Effects of Equalizing Salaries

When districts equalize salaries, the coaching positions for girls' teams become more attractive and more people apply. In some cases this means that more qualified men will replace women.

When districts equalize salaries and equalize opportunities for boys and girls (lengthened seasons, more practice time, etc.) some coaches may choose to drop this activity rather than devote more time and energy to it.

Workshop participants felt that these negative effects were temporary, that in time younger women who had themselves had the opportunity for athletic competition would become increasingly available as coaches and would not be deterred by more rigorous training and playing schedules.

Thoughts on the Pressure and Number of Spectators Argument

Although the Department of Labor tends to see pressure to win as a subjective, immeasurable factor, it is possible that a case can be made for a pay differential between two otherwise equal jobs if the pressure actually makes one of the jobs substantially different from the other. Pressure is often a difficult factor to justify because salaries are set before the season begins and hence before one knows what the pressures over winning, losing, or attendance will be.

Pressure and spectators are often determined by other factors which may be discriminatory. As long as male sports are enhanced by the attendance

of cheerleaders, bands, pep squads, the press, the school principal and the superintendent, as long as they are seen as the school's representatives in traditional rivalries and are the recipients of the major school awards, and as long as they are scheduled in prime time at the most convenient locations, girls' sports will not be their equal. Thus pressure and the number of spectators may be directly related to the unequal treatment of the two programs.

Moreover, the real objective of any school athletic program should be educational, not gate receipts or publicity.

An Ideal for the Future

At one time elementary school teachers were paid differently according to the subjects they taught. Today public grade-school teachers within a district are paid on the same scales. Undoubtedly at some future date school districts will have a single pay scale for all coaches, rather than separate rates for tennis, softball, field hockey, basketball, etc.

The basis of pay then would be the length of the season, not the sport coached. Substantial differences in practice hours might also be reflected in the pay rates.

Ideally girls' sports should not be forced into following the patterns set by boys' sports. Where the seasons for boys' teams are unreasonably long and the number of practice hours are excessive for children whose primary goal should be satisfactory completion of their school work, not their extracurricular activities, the boys' seasons and hours should be shortened.

In line with this ideal system, assistant coaches would be automatically assigned to sports when the participants reached a certain number so that an optimum coach-athlete ratio could be maintained.

Guidelines for the Present

The Department of Labor's current position on coaching salaries may be seen as analogous to their position on salaries for salespersons. They recognize the validity of higher pay for people selling big ticket items, lower pay for people at "pick and pay" counters, and the same pay for all other salespeople. Similarly the Department of Labor may accept three ranges on coaching salaries: higher pay for the major sport, usually football; lower pay for a truly minor sport, perhaps golf or bowling; and the same pay for all of the sports in between. A school that pays the same salary to the coaches of boys' and girls' basketball, boys' soccer and girls' field hockey, boys' baseball and girls' softball, etc., is

probably in compliance with the Equal Pay Act. Any school that has different salaries for the coaches of the girls' and boys' teams in the same sport or comparable sports should be prepared to justify those differentials on the basis of objective criteria.

The following decisions by the Department of Labor indicate that the Equal Pay Act is being implemented:

- At a high school in Woodbridge, Delaware, the girls' softball coach received less pay for equal duties than the boys' baseball coach. Compensation for past salary inequities and an increase in current salary was awarded to the girls' coach.

- $180,000 and first year salary adjustments were awarded to faculty members of a large state university. It was proven that wage differentials were "sex-based."

- Four women coaches received a total of $6,950 in compensation when investigators determined that their male counterparts were receiving higher salaries for equal work.

Title IX, implemented by the Office for Civil Rights in the Department of Health, Education and Welfare, also prohibits discrimination in coaches' pay. Recent decisions include the following:

- Back pay for the year 1975-76 and a salary adjustment to coaches of girls' sports was awarded by Cabell County Schools in West Virginia.

- Wythe County Public Schools in Wytheville, Virginia, was required to establish objective criteria--not spectator response--for assigning pay schedules for coaches.

For further information about the provisions of the Equal Pay Act, contact:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, D.C. 20210

or phone or write your field, area, or regional office of the Wage and House Division. It's listed in the white pages under United States Government, Labor.

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